

§ 110.72

and the efforts the requester has made to obtain the documents. The Secretary may accept such a statement in place of the required documentation or disapprove the Request for Benefits due to insufficient documentation. If insufficient documentation is submitted in response to the Secretary's letter, the Secretary may disapprove the Request for Benefits.

§ 110.72 Sufficient documentation for eligibility and benefits determinations.

(a) *Eligibility determinations.* When the Secretary determines that there is sufficient documentation in the Request Package to evaluate a requester's eligibility, she will begin the review to determine whether the requester is eligible for Program benefits. If the Secretary determines that the requester is not eligible, the Secretary will inform the requester (or his or her representative) in writing of the disapproval, and the right to reconsideration of the determination, as described in subpart J.

(b) *Benefits determinations.* If the Secretary determines that the requester is eligible for benefits, she will, after receiving adequate documentation from the requester for a benefits determination, either calculate the amount and types of benefits, as described in subpart I of this part, or request additional documentation in order to calculate the benefits that can be paid (*e.g.*, an Explanation of Benefits from the requester's health insurance company, if none was submitted). As provided in subpart J, requesters have the right to reconsideration of the Secretary's determination of the category and amount of benefits payable under the Program.

(c) *Additional documentation required.* At any time after a Request Form has been filed, the Secretary may ask a requester to supplement or amend the Request Package by providing additional information or documentation.

§ 110.73 Approval of benefits.

When the Secretary has determined that benefits will be paid to a requester and has calculated the type and amount of such benefits, she will so notify the requester (or his or her representative) in writing. The Secretary

42 CFR Ch. I (10–1–11 Edition)

will make payments in accordance with § 110.83. Once all benefits have been paid, the Request Package can no longer be amended (except for survivor benefits). The payment determination will constitute final agency action with regard to the particular countermeasure injury that is the subject of the Request for Benefits and payment (*i.e.*, the Request for Benefits is closed with regard to the injury that is the basis of the payment of benefits).

§ 110.74 Disapproval of benefits.

(a) If the Secretary determines that a requester is not eligible for payments under the Program, the Secretary will disapprove the Request for Benefits and provide the requester, or his or her representative, with written notice of the basis for the disapproval, and the right to reconsideration of the determination, as provided in § 110.90.

(b) The Secretary may disapprove a Request for Benefits even before the requester has submitted all the required documentation (*e.g.*, the Secretary may determine that a requester did not meet the filing deadline, or that a covered countermeasure was not used or administered).

(c) The Secretary may re-open a disapproved Request for Benefits on her own accord should medical or scientific evidence later become available to justify a re-determination of the disapproval of eligibility or payments. In extraordinary circumstances, to be determined at the Secretary's discretion, she may re-open a disapproved Request for Benefits even after the requester has exercised the right to reconsideration and the disapproval determination has been upheld in accordance with the procedures set out in § 110.90.

Subpart I—Calculation and Payment of Benefits

§ 110.80 Calculation of medical benefits.

In calculating medical benefits, the Secretary will take into consideration all reasonable costs for reasonable and necessary medical items and services to diagnose or treat a countermeasure recipient's covered injury, or to diagnose, treat, or prevent its health complications, as described in § 110.31. The

Secretary will consider and may rely upon benefits documentation submitted by the requester (*e.g.*, bills, Explanation of Benefits, and cost-related documentation to support the expenses relating to the covered injury or its health complications), as required by § 110.60. The Secretary will make such payments only to the extent that such costs were not, and will not be, paid by any third-party payer and only if no third-party payer had or has an obligation to pay for or provide such services or items to the requester, except as provided in §§ 110.83(c) and 110.84. There are no caps on the benefits for reasonable and necessary medical expenses that may be provided under the Program.

§ 110.81 Calculation of benefits for lost employment income.

(a) *Primary calculation.* Benefits under this section may be paid for days of work lost as a result of a covered injury or its health complications if the injured countermeasure recipient lost employment income for the lost work days as reasonable based on the degree of injury or disability. As stated in § 110.32(c), days for which an individual used paid leave will be considered days of work for which employment income was received and, therefore, would not qualify for lost employment income benefits. However, if the injured countermeasure recipient reimburses the employer for the paid leave taken and the employer restores the leave that was used, the individual may be eligible for lost employment income benefits for those days;

(1) The Secretary will calculate the rate of benefits to be paid for the lost work days based on the injured countermeasure recipient's gross employment income, which includes income from self-employment, at the time he or she sustained the covered injury. The Secretary may not, except with respect to injured individuals who are minors, consider projected future earnings in this calculation.

(i) For an injured countermeasure recipient with no dependents at the time the covered injury was sustained, the benefits are 66⅔ percent of the individual's gross employment income at the time of injury.

(ii) For an injured countermeasure recipient with one or more dependents at the time the covered injury was sustained, the benefits are 75 percent of the individual's gross employment income at the time of injury; and

(iii) In the case of an injured countermeasure recipient who is a minor, the Secretary may consider the provisions of 5 U.S.C. 8113 (authorizing the FECA Program), and any implementing regulations, in determining the amount of payments under this section and the circumstances under which such payments are reasonable and necessary.

(b) *Adjustment for inflation.* Benefits for lost employment income paid under the Program that represent future lost employment income will be adjusted annually to account for inflation.

(c) *Limitations on benefits paid.* The Secretary will reduce the benefits calculated under paragraphs (a) and (b) of this section according to the limitations described in this paragraph (c):

(1) *Number of lost work days.* An injured countermeasure recipient will be compensated for ten or more days of work lost if he or she lost employment income for those days as a result of the covered injury (or its health complications). If the number of days of lost employment income due to the covered injury (or its health complications) is fewer than ten, the Secretary will reduce the number of lost work days by five days. If the injured countermeasure recipient lost employment income for a period of five days or fewer, no benefits for lost employment income will be paid. Lost work days do not need to be consecutive. Partial days of lost employment income may be aggregated to calculate the total number of lost work days. The Secretary has the discretion to consider the reasonableness of the number of work days (or partial work days) lost as a result of a covered injury or its health complications in this calculation, and to consider alternative work schedules in determining the number of work days lost.

(2) *Annual limitation.* The maximum amount that an injured countermeasure recipient may receive in any one year in benefits for lost employment income under this Program is \$50,000.